

LEO AND FLORENCE WHITEMAN

IBLA 87-217

Decided February 2, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claim null and void ab initio. CA MC 182613.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers--Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Lands Subject to-Withdrawals and Reservations: Generally--Withdrawals and Reservations: Reclamation Withdrawals

A mining claim located on lands withdrawn for reclamation purposes under the first form is null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding repeal of the statute authorizing the initiation of such withdrawals.

APPEARANCES: Leo and Florence Whiteman, pro sese.

Leo and Florence Whiteman have appealed from a December 3, 1986, decision of the California State Office, Bureau of Land Management (BLM), declaring the Louis Jordan Whiteman placer mining claim, CA MC 182613, null and void ab initio because it was located on lands which had been withdrawn from all forms of appropriation under the public land laws, including the mining laws.

The subject mining claim was located on July 16, 1986, and recorded with BLM on August 21, 1986. The location notice indicates the claim is situated in "T. 8 N., R. 14. E., Sec. 4, NW 1/4 SW 1/4, Mount Diablo Meridian."

BLM states in the December 3, 1986, decision that the above-described land is withdrawn from all forms of appropriation under the public land laws, including the mining laws, and reserved for the use of the Bureau of Reclamation, Department of the Interior, in connection with the development, operation, and maintenance of the Central Valley Project by Public Land Order No. (PLO) 2729 dated July 17, 1962 (27 FR 6938).

In their statement of reasons for appeal, appellants do not dispute BLM's determination that their claim is situated on land subject to PLO 2729. Therein, appellants describe work done on their mining claim and state that the claim has been in their family since 1938. 1/

[1] A copy of PLO 2729, which describes the lands in appellants' mining claim, is contained in the case file. The PLO withdrew certain lands for reclamation purposes pursuant to section 3 of the Act of June 17, 1902, 43 U.S.C. | 416 (1970), repealed in part effective October 21, 1976, section 704(a), Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2792. The repeal did not affect outstanding reclamation withdrawals. Those were expressly continued, subject to review by the Secretary under section 204(l) of FLPMA, 43 U.S.C. | 1714(l) (1982).

It is well established that a mining claim located on a date when the lands are subject to a first-form reclamation withdrawal is null and void ab initio. William B. Rawlings, 85 IBLA 243 (1985); Ronald W. Ramm, 67 IBLA 32 (1982). The lands in question were subject to a first-form reclamation withdrawal at the time the Whitemans located their claim. For this reason, the lands were not open to mineral location in 1986. Lands which have been withdrawn from location under the mining laws remain so withdrawn until there is a formal revocation or notification of the order of withdrawal. There is no documentation in the record to suggest that this has occurred.

Thus BLM properly declared appellants' mining claim null and void ab initio.

We further note that even if appellants or their family had worked the claim, as alleged, for years prior to the date of PLO 2729, the filing of the notice of location for recordation with BLM after the filing date provided in section 314 of FLPMA, 43 U.S.C. | 1744 (1982), 2/ would result in the claim being declared abandoned and void. See 43 CFR 3833.1-1; Florian L. Glineski, 87 IBLA 266 (1985).

1/ In their statement of reasons, appellants advise that several years ago, "the Louis Jordan Whiteman mining claim was on the Cosumnes river just below the present claim site that is now in jeopardy." There is no reference in the record to a claim located in 1938. Included in the record forwarded to the Board by BLM however, is a case file for the Louis Jordan Whiteman placer claim, CA MC 102990. That claim was located by appellants on Nov. 14, 1981, and recorded with BLM on Jan. 6, 1982. The location notice and accompanying map describe the same lands as that in the Louis Jordan Whiteman placer mining claim, CA MC 182613, at issue herein. The case file contains a notice of location, a map, and annual filings of evidence of assessment through 1984. There is nothing in the case file for CA MC 102990 to indicate the status of that claim, or to detail its history. However, where the land was withdrawn from mining in 1962, it would not be open to location in 1981.

2/ Section 314 of FLPMA, 43 U.S.C. | 1744 (1982), provides in part:

"The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

I concur:

John H. Kelly  
Administrative Judge

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fn. 2 (continued)

period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground."